MC 1885/2007
BEFORE

THE HON'BLE JUSTICE SMT. A. HAZARIKA

This is an application filed on behalf of the applicant/appellant praying for in voking the inherent power of the Court under Section 151 of Code of Civil Proced ure (CPC for short) conferring the visitation rights upon the applicant/appellan t relating to the order dated 13.12.05 passed by the learned District Judge, Jor hat in Civil Misc. Case No.99/03 arising out of Guardianship Case No.180/97 in t he light of the contention and statements made in Misc. Case No. 649/06, which w as disposed of by an order dated 27.6.06 with some relief to the applicant/appel lant, if necessary by interviewing the minor child.

Heard Mr. B.D. Das, learned counsel for the applicant. Also heard Mr. C. K.S. Baruah, learned Sr. counsel assisted by Ms. A. Dey, Advocate for the respon dent.

The appeal preferred by the applicant against the judgment dated 13.12.0 5 passed by the learned District Judge, Jorhat in Civil Misc. Case No.99/03 has been dismissed by this Court being not maintainable. However, the submission of Mr. Das is that, this Court even after dismissal of the appeal has got the inher ent power under Section 151 CPC for conferring visitation rights upon the applic ant/appellant pursuant to the order dated 27.6.06 passed by this Court in Misc. Case No.649/06.

In support of his contention, the learned counsel has cited the followin g decisions:

i) (2003) 7 SCC 250, Saihba Ali vs- State of Maharastra and others,
ii) (2006) 3 SCC 62 Sheila B Das vs- PR Sugasree,
iii) AIR 2000 SC 2172, Jay Prakash Khadria vs- Shyam Sunder Agarwalla,
iv) (1999) 3 SCC 126, N. Nirmala vs- Nelson Jeyakumar,
v) AIR 2005 SC Kerala 249, Lekshmi and another vs- Vasanta Kumari.
vi) (2006) 1 SCC 479, Uttar Pradesh State Brassware Corpn. Ltd & another vs - Uday Narain Pandey.

Heard Mr. CKS Baruah, learned Sr. counsel appearing for the respondent. Accordin g to Mr. CKS Baruah this petition is misconceived and not maintainable after the dismissal of the appeal, preferred by the applicant herein, as no appeal is pen ding before this Court for adjudication. Hence, by way of an application under S ection 151 CPC, the appellate jurisdiction of the Court cannot be invoked. Learn ed Sr. counsel further submitted that the authorities cited by the learned couns el for the applicant/appellant do not support his contention. Therefore, urged f or dismissal of this application in limine inasmuch as, after dismissal of the a ppeal, there is no dispute pending before this Court. Learned Sr. counsel has fu rther submitted that, although the applicant has pleaded that in Misc. Case No.6 49/06, this Court allowed to exercise the visitation rights to the applicant to visit the minor in question, such order was purely an ad interim order subject t o the final order that might eventually be passed in the appeal. After dismissal of the appeal itself, now the applicant has no leg to stand to continue with th e said order dated 27.6.06 as it is, or in any modified form.

Under the Act 1890, such a prayer for visitation right can be made before the le arned trial Court. There having specific provision under the special statute ref erred to above, the inherent power of this Court under Section 151 CPC is not to be exercised. While arriving at such a decision I am fortified by the law laid down by the Apex Court in AIR 1961 SC 218 (Padam Sen & another vs- The State of Uttar Pradesh), AIR 1970 SC 997(Nainsingh vs- Koonwarjee & others) and (2006) 3 SCC 699(Jet Ply Wood (P) Ltd. & another vs- Madhukar Nowlakha & others)

I have perused the contentions made in the application as well as decisions reli ed upon by Mr. Das.

In view of the above discussion and decisions rendered by the Apex Court in Pada m Sen (supra), Nainsingh (supra) and Jet Ply Wood (supra), I am of the view that after dismissal of the appeal, power under Section 151 CPC cannot be invoked by an appellate court, when the appeal was dismissed as not maintainable. That bei

ng the position, this application is dismissed being devoid of merit and not mai
ntainable.
No order as to cost.